

Excluded.

said herpesvirus further encodes one or more heterologous genes.

Please amend claim 36 as follows:

Claim 36. (AMENDED) A vaccine comprising a mutated herpesvirus capable of infecting a mammalian cell and of eliciting a protective immune response upon administration, said herpesvirus comprising a mutation in one or more early genes encoding a protein essential for viral genome replication to render the herpesvirus replication defective and encodes one or more heterologous genes.

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Please amend claim 41 as follows:

Claim 41 (AMENDED) A method of inducing an immune response against herpesvirus in a mammal comprising administering to said mammal a vaccine comprising a mutated herpesvirus, said herpesvirus having a mutation in one or more genes encoding a protein essential for viral genome replication to render the herpesvirus replication defective and encodes one or more heterologous genes.

REMARKS

Claims 9, 25-27, 29, 32-34, 37-39, and 42-49 are cancelled without prejudice. The aforementioned claims corresponded to Count 2 in Interference No. 104,363, *Inglis v. Knipe*, , brought before The Board of Patent Appeals and Interferences; see Memorandum Opinion and Order (Paper No. 107). Claims 31, 35 and 41 were designated as not corresponding to the Count.

Claims 31, 35 and 41 have been amended to stand as independent claims and to encompass expression of heterologous genes, subject matter which was held by The Board of Patent Appeals and Interferences, in interference No. 104,363, *Inglis v. Knipe*, Memorandum Opinion and Order (Paper No. 107) to be outside of the scope of the interference subject matter. No new matter has been added by virtue of these amendments and their entry is respectfully requested.